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BEFORE THE ARIZONA CORPORATION

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Arizona Corporation Commission

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AZ CORP COMMISSION
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COMMISSIONERS
MARC SPITZER- Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY FOR
ADJUSTMENTS TO ITS RATE AND CHARGES
FOR UTILITY SERVICE FURNISHED BY ITS
WESTERN GROUP AND FOR CERTAIN
RELATED APPROVALS.

DOCKET NO. W-01445A-04-0650

STAFF'S REPLY IN SUPPORT OF
IT'S SUFFICIENCY MOTION

Our State is ensnared a brutal and unprecedented drought. Staff believes that the Commission will play an important role in responding to this crisis. One important response is the consideration of prudent and conservation-oriented rate designs. Staff believes that review and analyses of such designs should be incorporated into the rate-making process. This should be done at the very beginning of the process, rather than as an afterthought at the end. Therefore, Staff requests that Arizona Water be directed to file a tiered rate design.

Staff's Request

As stated in Staff's initial motion, Staff requests an expedited hearing on this matter. Staff also requests relief from the prejudice presented by Arizona Water's omission of a requested inverted tiered rate design ("tiered design"). Staff requests the Commission order Arizona Water to provide a tiered design as a sufficiency condition in this docket. In the alternative, Staff requests that the Commission find that the time periods prescribed by Arizona Administrative Code ("A.C.C.") Rule 14-2-103 ("Rule 103") subsection (B) (11) (d) should be suspended or extended until Arizona Water provides a tiered design. Finally, if the Commission does not agree with either of these requests, then Staff requests Arizona Water be ordered to file the information within 45 days of a sufficiency finding as part of discovery.

Reply to Arizona Water

In this Reply, Staff will reaffirm and clarify three issues:

1) Rule 103 clearly provides the ability to require Arizona Water to provide an inverted tiered rate

1 design; 2) The Commission's strong policy in favor of inverted block rates is in compliance with the
2 APA; 3) Staff's alternative request for suspension of the time clock is appropriate and provided for
3 in Rule 103.

4
5 **I. Rule 103 clearly provides the ability to require Arizona Water to provide an inverted tiered**
6 **rate design.**

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8 Staff requests the Commission order Arizona Water to provide inverted tiered rate
9 information prior to a sufficiency finding. As discussed in Staff's Motion, the Commission has
10 determined that conservation is a distinct priority for the State - especially during this time of
11 drought. As well, the Commission has taken the position that inverted tiered rates foster such
12 necessary conservation. In fact, the Commission has held in the most recent Arizona Water case that
13 such rates were necessary and prudent. Thus, Staff believes that tiered information is fundamental to
14 its ability to analyze Arizona Water's Rate Schedules. Given the essential nature of the information
15 sought, it is appropriate for the Commission to further articulate its policy for tiered rates at the
16 beginning of this matter as subsection (B) (5) provides.

17 Staff did make a request of Arizona Water directly for tiered rate information prior to making
18 this request of the Commission. Staff explained that the tiered rate information would be inevitably
19 required and that Arizona Water was in the best position to provide the material. Staff went on to
20 explain that the information would be used in analyzing the proposed rate schedules and is thus
21 really essential to the processing of the matter.¹

22 However, Arizona Water has refused, suggesting that because it filed something with regard
23 to Rate Schedules it has satisfied any sufficiency requirement. If such an argument were to prevail, it
24 would simply elevate the form of Arizona Water's compliance over the actual substance. Given such
25 information will clearly be fundamental to the processing of this application, such a requirement
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28 ¹ The request for Arizona Water to be proactive in providing this essential information is reminiscent of Chairman Spitzer's
comments in their last rate case, (cited in Staff Motion p.2, ln.16-18), "[I]f that is the way the Commission order is going to end
up ultimately, he would suggest your participation in finding the solution rather than simple opposition to what has been
proposed by the Staff."

1 prior to the processing of the case² is appropriate.

2 Arizona Water's position unduly burdens Staff in the processing of this application, and
3 potentially shifts Arizona Water's burden onto Staff. Staff has identified material that is
4 fundamental to the completion of this case; the best source for such information is Arizona Water.
5 While in the previous rate matter, Staff was able to prepare its own tiered design from scratch, it was
6 not without extraordinary effort and use of Staff resources. Due to the lack of Arizona Water's
7 participation, the information was presented in less than the ideal point in the processing of the case.
8 Given the burden this prejudice would place on Staff, Arizona Water (the best source for the initial
9 information) should be required to provide tier rate information in a timely manner.

10 11 **II. The Commission's strong policy in favor of inverted block rates is in compliance with APA.**

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13 In its Response, Arizona Water argues that the Commission is precluded from requiring the
14 filing of an inverted tiered rate design because it has not conducted a rulemaking for such a general
15 requirement. However, such an argument ignores the well settled standard for establishing a
16 Commission policy.

17 While rulemaking is a common method, policy may also be set case by case adjudication. *See*
18 *Pierce*, 1 *Administrative Law Treatise* § 6.9 (4th ed. 2002). *Pierce* discusses the landmark *Bell*
19 *Aerospace* case as follows: "The Court has not even suggested that a court can constrain an agency's
20 choice between rulemaking and adjudication in any opinion since *Bell Aerospace*... . The Court's
21 unanimous opinion on the rule making-adjudication issue in *Bell Aerospace*... must be taken as a flat
22 rejection of any judicial attempt to constrain agencies from developing "rules" through the
23 adjudicatory process". *Id.* at p. 382, *see National Labor Relations Bd. V. Bell Aerospace Co.*, 416
24 U.S. 267 (1974). As well, in *Arizona Corp. Comm'n v. Palm Springs Utility Co.*, 24 Ariz. App. 124,
25 129, 536 P2d 245, 250 (1975), the court states that the Commission could proceed "on a case by case
26 approach, so long as there exists a rational statutory or constitutional basis for the action... ."

27 The Commission has stated a policy of water conservation through rates and indicated that on
28

2 This refers to the processing contemplated in A.A.C. 14-2-103 (B)(11).
S:\LEGAL\LVandenBerg\Pleadings\04-0650 Staff's reply.DOC

1 a case by case basis it will determine if the presumption for tiered rates is appropriate. For the
2 Commission's convenience, Attachment A provides a listing of recent water cases in which the
3 Commission has found inverted tiered rates to be appropriate. In furthering such a policy, the
4 Commission is acting under its constitutional ratemaking authority. See Article XV of the Arizona
5 Constitution. Arizona Water has failed to demonstrate any merit to its claim that the Commission is
6 precluded from acting to conserve the State's precious water resources through ratemaking. Given
7 that policy may be implemented on a case by case basis the Commission's policy in favor of inverted
8 block rates does not violate the APA.

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10 **III. Staff's alternative request for suspension of the time clock is appropriate and provided for**
11 **in Rule 103.**

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13 AAC Rule 14-2-103 (B) (11) (e) states: "Upon motion of any party to the matter or on its
14 own motion, the Commission or the Hearing Officer may determine that the time periods prescribed
15 by subsection (B) (11) (d) should be extended or begin again due to... (ii) An extraordinary event,
16 not otherwise provided for by this subsection."

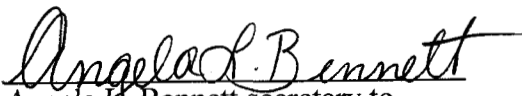
17 If Staff's initial requested relief is not granted, Staff requests that the absence of tiered rates
18 in Arizona Water's application be declared an extraordinary event. Traditionally, Arizona Water is
19 required to provide all information fundamental to the processing of the application prior to the
20 processing described in subsection (B) (11). If Arizona Water does not provide the requested
21 information prior to a sufficiency finding, Staff will be prejudiced in the processing of this case.
22 Unfortunately, Staff's resources are currently stretched and delay in the availability of tiered rate
23 information will make it extremely difficult for Staff to conduct an adequate review under the
24 prescribed timeline. It is the prejudice that Staff will suffer from the delay in information which
25 qualifies the omission as an extraordinary event. As an extraordinary event, it is appropriate for the
26 time clock to halt until the event (i.e. the absent information) is remedied.

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1 Lyn Farmer
Chief Counsel, Hearing Division
2 Arizona Corporation Commission
1200 West Washington
3 Phoenix, Arizona 85007

4 Ernest Johnson
Director, Utilities Division
5 Arizona Corporation Commission
1200 West Washington
6 Phoenix, Arizona 85007

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8 
9 Angela L. Bennett secretary to
Lisa A. VandenBerg

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ORDER	DATE OF ORDER	DOCKET #	APPLICATION FILED	MATTER
65353	11-1-02	W-03880A-02-0462	6-20-02	Application of JNJ Enterprises, LLC dba Christopher Creek Haven Water Company
65534	1-23-03	W-01408A-02-0595	8-5-02	Application of Mt. Lemmon Co-op Water Company, Inc.
65652	2-18-03	W-02624A-02-0745	9-30-02	Application of Michael's Ranch Water Users' Assoc.
65754	3-20-03	W-02848A-02-0449	6-18-02	Application of Starlight Water Company
65756	3-20-03	W-03474A-02-0673	9-6-02	Application of Stratman Water Company
65853	4-25-03	W-02526A-02-0320	4-30-02	Application of Bellemont Water Co.
66175	8-13-03	W-01979A-02-0900	12-12-02	Application of Silverwell Service Corporation
66388	10-6-03	W-02015A-03-0268	4-28-03	Application of Beaver Valley Water Co.
66395	10-6-03	W-02393A-03-0312	5-14-03	Application of Chaparral Water Co.
66514	11-10-03	W-02448A-03-0278	5-1-03	Application of High Country Pines Water Co.
66849	3-19-04	W-01445A-02-0619	8-14-02	Application of Arizona Water Company
67066	6-25-04	W-01751A-03-0036	2-21-03	Application of Katherine Resort Water Co.
67093	6-30-04	WS-01303A-02-0867/0868/0869/0870	11-22-02/12-13-02	Application of Arizona-American Water Co.
67161	8-10-04	W-01536A-03-0591	8-19-03	Application of Lazy C Water Service
67166	8-10-04	W-03512A-03-0279	5-1-03	Application of Pine Water Co.

ATTACHMENT A